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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/550,239
Filing Date: September 23, 2005
Appellant(s): BAILEY, ALEXANDER W. M.

J. Georg Seka
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 26, 2010 appealing from the Office action mailed January 26, 2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

PCT/AU85/00159	Dash	02-1986
WO 86/00866		
1,360,720	Brown et al	11-1920

4,240,360

Sanders et al

12-1980

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. **Claims 2, 9-14, 16-18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over PCT/AU85/00159 (WO86/00866) to Dash (Dash) in view of USP 1,360,720 to Brown et al (Brown).**

Dash discloses a metal pallet comprising a top deck 40, a bottom deck 21, at least two elongate bearers 13 securing said decks together, each bearer having a first portion and a second portion (wherein the first and second portions are defined as the left and right hand sides of the bearer 13 in the assembled configuration such as shown in Fig 4), each portion extends between the decks and has a top web 35 and a bottom web 35 connected to a central web 32 by inclined portions 33-34, wherein at least one edge includes, such as shown in Fig 1, a cover plate, a stiffener and an end cap, wherein each said top and bottom deck is of a profiled configuration, wherein said profiled configuration are corrugations. The differences being that Dash fails to clearly disclose each bearer has a first and a second longitudinally extending bearer portions, with each portion being secured to said decks and extending separately transversely between said decks and wherein each portion has a longitudinally extending top web secured to the top deck, a longitudinally extending bottom web secured to the bottom deck, a longitudinally extending central web extending generally normal to said decks, and longitudinally extending inclined web portions securing the central web to the top

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and bottom webs, each inclined web portion being inclined to the decks by an acute angle, the central webs are releasably securable together.

Brown et al teaches the idea of providing a supporting bar/bearer comprising, such as shown in Figs 1 and 4, a first and a second longitudinally extending bearer portion (1,2), with each portion being secured to upper and lower decks (3,4) and extending separately transversely between said decks and wherein each portion has a longitudinally extending top web secured to the top deck 3, a longitudinally extending bottom web secured to the bottom deck 4, a longitudinally extending central web 5 extending generally normal to said decks and releasably securable together, and longitudinally extending inclined web portions securing the central web to the top and bottom webs, each inclined web portion being inclined to the decks by an acute angle; wherein the bar's structure provides a strong, yet lightweight supporting bar. Therefore, it would have been obvious to modify each bearer of Dash by having the bearer comprising a first and a second longitudinally extending bearer portions with each portion being secured to upper and lower decks and extending separately transversely between said decks and wherein each portion has a longitudinally extending top web secured to the top deck, a longitudinally extending bottom web secured to the bottom deck, a longitudinally extending central web extending generally normal to said decks and releasably securable together, and longitudinally extending inclined web portions securing the central web to the top and bottom webs, each inclined web portion being inclined to the decks by an acute angle in order to provide a strong, yet lightweight supporting bar, as taught by Brown et al, since both teach alternate conventional

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supporting bar structure, used for the same intended purpose of load-support, thereby providing structure as claimed.

2. Claims 4-8, and 15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Dash, as modified, as applied to claim 18 above, and further in view of USP 4,240,360 to Sanders et al (Sanders).

Dash, as modified, discloses all the elements as discussed above except for the webs are releasably securable to the decks by fastening means of threaded fasteners or rivets, and a sheet material secured to at least one of said decks.

Sanders teaches the idea of using releasable fastening means of rivets or removable clips for securing elements of a metal; wherein the releasable fastening means allows the pallet to knock-down for spaced saving purpose. Therefore, it would have been obvious to modify the structure of Dash, as modified, by providing releasable fastening means of threaded fasteners or rivets in order to allow the pallet to knock-down for spaced saving purpose, as taught by Sanders et al, since both teach alternate conventional pallet structure, used for the same intended purpose, thereby providing structure as claimed. In regard to a sheet secured to at least one of said decks, the examiner takes the position that it would have been obvious and well within the level of one skill in the art to provide at least one of the decks with a sheet secured thereto in order to provide a flat supporting deck, when so is desired. Further, it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art.

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3. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dash in view of Brown et al and Sanders et al.

Dash discloses a metal pallet comprising a top deck 40, a bottom deck 21, at least two elongate bearers 13 securing said decks together, each bearer having a first portion and a second portion (wherein the first and second portions are defined as the left and right hand sides of the bearer 13 in the assembled configuration such as shown in Fig 4), each portion extends between the decks and has a top web 35 and a bottom web 35 connected to a central web 32 by inclined portions 33-34, wherein at least one edge includes, such as shown in Fig 1, a cover plate, a stiffener and an end cap, wherein each said top and bottom deck is of a profiled configuration, wherein said profiled configuration are corrugations. The differences being that Dash fails to clearly disclose each bearer has a first and a second longitudinally extending bearer portions, with each portion being secured to said decks and extending separately transversely between said decks and wherein each portion has a longitudinally extending top web secured to the top deck, a longitudinally extending bottom web secured to the bottom deck, a longitudinally extending central web extending generally normal to said decks, and longitudinally extending inclined web portions securing the central web to the top and bottom webs, each inclined web portion being inclined to the decks by an acute angle, the central webs are releasably securable together, and the webs are releasably securable to the decks by fastening means of threaded fasteners or rivets, and a sheet material secured to at least one of said decks.

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Brown et al teaches the idea of providing a supporting bar/bearer comprising, such as shown in Figs 1 and 4, a first and a second longitudinally extending bearer portion (1,2), with each portion being secured to upper and lower decks (3,4) and extending separately transversely between said decks and wherein each portion has a longitudinally extending top web secured to the top deck 3, a longitudinally extending bottom web secured to the bottom deck 4, a longitudinally extending central web 5 extending generally normal to said decks and releasably securable together, and longitudinally extending inclined web portions securing the central web to the top and bottom webs, each inclined web portion being inclined to the decks by an acute angle; wherein the bar's structure provides a strong, yet lightweight supporting bar. Therefore, it would have been obvious to modify each bearer of Dash by having the bearer comprising a first and a second longitudinally extending bearer portions with each portion being secured to upper and lower decks and extending separately transversely between said decks and wherein each portion has a longitudinally extending top web secured to the top deck, a longitudinally extending bottom web secured to the bottom deck, a longitudinally extending central web extending generally normal to said decks and releasably securable together, and longitudinally extending inclined web portions securing the central web to the top and bottom webs, each inclined web portion being inclined to the decks by an acute angle in order to provide a strong, yet lightweight supporting bar, as taught by Brown et al, since both teach alternate conventional supporting bar structure, used for the same intended purpose of load-support, thereby providing structure as claimed. Further, Sanders teaches the idea of using releasable

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fastening means of rivets or removable clips for securing elements of a metal; wherein the releasable fastening means allows the pallet to knock-down for spaced saving purpose. Therefore, it would have been obvious to modify the structure of Dash, as modified, by providing releasable fastening means of threaded fasteners or rivets in order to allow the pallet to knock-down for spaced saving purpose, as taught by Sanders et al, since both teach alternate conventional pallet structure, used for the same intended purpose, thereby providing structure as claimed. In regard to a sheet secured to at least one of said decks, the examiner takes the position that it would have been obvious and well within the level of one skill in the art to provide at least one of the decks with a sheet secured thereto in order to provide a flat supporting deck, when so is desired. Further, it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art.

(10) Response to Argument

(A) In response to Appellant's argument on pages 9-11 that the Office action fails to provide reasoning why a person of ordinary skill in the pallet art would combine the pallet of Dash with support bars or spars for aircraft structures of Brown, and there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case,

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the motivation to combine the references is to provide a strong, yet lightweight supporting bar/bearer portion, and that the improvement is no more than the predictable use of prior art elements according to their established functions. Further, KSR has made clear that the teaching, suggestion, or motivation test is flexible and an explicit suggestion to combine the prior art is not necessary.

(B) In response to Appellant's argument on page 11 that "[o]nly Dash is pertinent to pallets, Brown is not" and that no one in the pallet art would adopt the support spars of Brown, the examiner respectfully takes the position that KSR clearly states "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* at 1739. In this case, both references are drawn to a supporting bar/bearer portion. As such, modifying the bearer of Dash, in view of the teaching of Brown, to provide a strong, yet lightweight supporting bar/bearer portion would have yielded no more than the predictable outcome to one ordinary skill in the art.

(C) In response to Appellant's argument on page 12 that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

(D) In response to Appellant's argument on pages 13-14 that Dash fails to provide the limitation in claim 2 of the central webs being releasably securable together, the examiner respectfully takes the position that Dash, as modified by Brown, teaches said claimed limitation of the central webs being releasably securable together. Further in response to Appellant's argument that Dash fails to recognize the problem being address by the present invention, the examiner respectfully takes the position that Dash, as modified, is not required to recognize and/or to solve the problem being address by the present invention, and that the claimed language fails to provide adequate structural limitations in order to distinguish from Dash, as modified.

(E) In response to Appellant's argument on pages 15-16 regarding the rejection of claims 4-8 and 15 in view of Sanders that Sanders fails to disclose the claimed bearer structure and there is no motivation to combine Dash with Sanders, the examiner respectfully takes the position that (1) Sanders is used for the teaching as stated in the art rejection, and is not required to disclose the claimed bearer structure, and (2) the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to modify Dash in view of Sander is to provide a knockdown pallet for spaced saving purpose.

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Further, it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art.

(F) In regard to Appellant's argument regarding the rejection of claim 19, all the above responses by the examiner are applicable thereto.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Hanh V. Tran/

Primary Examiner, Art Unit 3637

Conferees:

Hanh V. Tran /HVT/

Darnell Jayne /dj/

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